IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.653 OF 2005

Air India Limited. ...Petitioner.

Versus

R. H. Sonarikar and Anr. ...Respondents.

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Mr. S.K. Talsania with Mr. Anurag Gokhale i/b. M. V. Kini for the Petitioner.

Mr. Jaiprakash Sawant for Respondent No.1.

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CORAM : DR. D.Y. CHANDRACHUD, J.

March 21, 2005.

ORAL JUDGMENT:

Rule, by consent of Counsel returnable forthwith. Counsel appearing on behalf of the Respondents waives service. By consent taken up for hearing and final disposal.

2. The First Respondent was appointed as an Assistant Flight Purser with Air India on 20th September 1975 and was confirmed in service with effect from 1st July 1976. On 1st June 1994, the First

Respondent was redesignated as a Senior Check Flight Purser. On 3rd July 1997, the First Respondent was arrested by the Police at the International Airport at Delhi and a First Information Report was lodged. The First Respondent was charged with the commission of offences under Sections 419, 420, 468 and 471 read with Section 120B of the Penal Code. The First Respondent was placed under suspension on 9th July 1997. A chargesheet was issued to the First Respondent on 9th October 1997 for a disciplinary proceeding on the allegation that he had conspired to smuggle two passengers into Canada by using passports issued in favour of the First Respondent's daughters and by taking illegal gratification from these two inadmissible passengers. The First Respondent submitted his reply to the charges and a departmental enquiry was convened. On 2nd February 1998, the First Respondent was informed of the applicability of the Certified Standing Orders and it was stated that the charges that were levelled against him would be read as "taking or giving bribes or any illegal gratification" and "failure to report to the Competent Authority the fact of arrest by the Police." The enquiry

was thereupon proceeded with and the Enquiry Committee submitted its report in January 1999. A copy of the report was furnished to the First Respondent and he was called upon to submit his explanation thereon including upon the tentative findings and the proposed penalty. The First Respondent submitted his reply and on 4th May 1999, an order of dismissal was communicated to him together with a cheque in the sum of Rs.14,808/- for one month's pay under Section 33(2)(b) of the Industrial Disputes Act, 1947.

3. The Petitioner filed an approval application before the National Industrial Tribunal, Mumbai in Reference NTB-1 of 1990. An affidavit was filed on behalf of the Petitioner of its Deputy General Manager in lieu of the Examination-in-Chief. By the impugned order dated 15th June 2004, the Tribunal has dismissed the approval application. The Review Petition which was filed by the Petitioner was subsequently dismissed on 16th August 2004.

4. The only ground on which the Tribunal has declined to

allow the approval application is that the order of dismissal was not passed by an officer competent to do so under the Certified Standing Orders. The Certified Standing Orders provide a list of authorities competent to exercise disciplinary jurisdiction. Annexure-E thereto inter alia contains an entry (Entry XI) in relation to the Inflight Services Department. Under Entry XI, the Deputy Director, Inflight Services is competent to impose all disciplinary penalties upon any employee not above the grade of Station Superintendent/Chief Air Hostess or its equivalent. The Deputy Managing Director is the Appellate Authority. Before the Tribunal, Air India relied upon a circular dated 23rd February 1996 by which certain posts in the Company came to be redesignated. The circular which has been issued by the Director incharge of the Human Resource Department provides inter alia the existing grades, existing designations and revised designations for certain officials of Air India. Among them in Grade 39 is the post of Deputy Director which is redesignated as that of General Manager. The circular provides that these designations in a particular grade are only indicative and not exhaustive and along with the revised

designation, the department/division or functions/activities performed by the individual may be suffixed. Moreover, it has been clarified that the changes in designation will not involve any change in the exercise of administrative, financial or disciplinary powers which will be continued to be exercised as prescribed by the instructions applicable to the respective grades.

5. The order of dismissal was passed by the General Manager- Co-ordination. The Tribunal declined to grant approval and was of the view that there was no post of General Manager, Coordination in the Standing Orders. Moreover, according to the Tribunal, there was no evidence on record to show that at the relevant time the post of Deputy Director, Inflight Services was vacant. The Tribunal, therefore, drew an inference that since the official who had signed the order of termination retained the designation of General Manager, Coordination even when he was posted in the Inflight Department, it could not be said that he was given the responsibilities of the post of Deputy Director of Inflight Service because the post was restructured as General Manager, Coordination.

6. Now, a perusal of the record before the Tribunal would show that an affidavit was filed before it on 28th May 2003 of the Deputy General Manager, HRD in the Inflight Services Department. The aforesaid affidavit in lieu of his Examination-in-Chief clarifies that under the Certified Standing Orders, an order of dismissal in respect of the First Respondent was required to be passed by the Deputy Director in the Inflight Services Department. All that had happened by the circular dated 23rd February 1996 was a rationalisation of designations and the post of Deputy Director was given a revised designation as that of General Manager. There is, in my view, merit in the submission urged on behalf of Air India, that the Tribunal has committed an error apparent on the face of the record in holding that the order of dismissal was passed by an official who was not competent to do so. The order of termination in the present case, was passed by Mr.S. Vasu in his capacity as General Manager-Coordination. The order by which Mr. S. Vasu was posted in the Inflight Services Department was annexed to the affidavit dated 28th

May 2003. The order of the Managing Director of 3rd October 2002 clearly spells out that S.Vasu was posted as General Manager-Coordination in the Inflight Services Department. From the circular issued by the Air India on 23rd February 1996, there can be absolutely no dispute about the position that the post of General Manager is only a redesignation of the existing post of Deputy Director in Grade 39. The Tribunal has declined to grant its approval purely on the basis of a specious finding that there was no evidence to show that the post of Deputy Director, Inflight Services was vacant. That post was only redesignated as the post of General Manager and there was no occasion for the post to be vacant. Similarly, the finding that it could not be said that Vasu was given the responsibilities of Deputy Director, Inflight Services because the post was redesignated as that of General Manager, Coordination is clearly erroneous and contrary to the material on the record. The power of termination had to be exercised by the Deputy Director, Inflight Services under the Certified Standing Orders. That post is simply redesignated in the hierarchy of Air India as of a General Manager. Vasu was posted as General

Manager in the Inflight Services Department, and his post is in fact the post of Deputy Director, Inflight Services. The order of termination has been passed by a competent official. The circular merely changed nomenclatures without any change in substantive duties or functions. To be overborne by the nomenclatures is to miss the wood for the trees.

7. In the circumstances, the interference of this Court under Article 226 is warranted. The order of the Tribunal suffers from an error apparent on the face of the record. The Writ Petition is allowed and the impugned orders dated 15th June 2004 and 16th August 2004 are quashed and set aside. The approval application (NTB-65/99 arising out of Reference No.NTB-1 of 1990) shall now stand restored to the file of the National Industrial Tribunal for consideration of the remaining issues on merits. The hearing of the approval application is expedited.

8. The petition is accordingly disposed of. No order as to

costs.

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